Filed 12/28/09 In re Megan P. CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MEGAN P., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. CLAUDIA G., Defendant and Appellant.	G041893 (Super. Ct. No. DP016434) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jane L. Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

* * *

Two-month-old I.G. died from nonaccidental injuries inflicted while in the care of her mother, Claudia G., and her father, Ivan G. The juvenile court took dependency jurisdiction over the baby's sibling, Diego G., and her half-sibling, Megan P.; removed them both from parental custody; and denied reunification services to Claudia. In Diego's case, the juvenile court also denied reunification services to Ivan G. and referred the case directly to a permanent plan selection hearing under Welfare & Institutions Code section § 366.26.[1] Claudia filed a petition challenging that referral order under California Rules of Court, rule 8.452, and this court issued an opinion denying the petition in July 2009. (*Claudia G. v. Superior Court* (July 28, 2009, G041825) [nonpub. opn.]).

The juvenile court did not refer Megan's case to a permanent plan selection hearing because it granted reunification services to her father, Eddie P. Consequently, Claudia appeals from the court's jurisdictional and dispositional orders affecting Megan. She claims there is insufficient evidence to support the findings that (1) she caused I.G.'s injuries, (2) Megan is at a substantial risk of harm if she remains in Claudia's custody, and (3) it would not benefit Megan to pursue reunification. We find the record supports the juvenile court's judgment and affirm.

FACTS

We recite the facts as stated in our previous opinion: "One-year-old Diego was placed into protective custody on December 14, 2007, after his two-month-old baby sister was brought to an emergency room in full cardiac arrest. She died the next day. Tests showed 'multiple subdural hematomas on the surface and the inside of the brain.' The treating physician stated the injury 'would require a significant force and there was no evidence of external trauma.' Child abuse was suspected. . . .

[1] All statutory references are to the Welfare and Institutions Code.

"The mother, the father, Diego, and the baby lived in a room they rented in a three bedroom house in Santa Ana. The mother told the emergency response social worker 'she had fed the [baby] a bottle in the morning, burped her, then wrapped her tightly in a blanket and laid her on the bed. [S]he went into the kitchen to prepare breakfast and heard the child coughing. [W]hen she went into the room[,] the child had the blanket over her head. The mother stated she saw the child was blue and not breathing so she took her by the shoulders, lifted her and shook her to revive her. She demonstrated how she shook the child and it was a mild shaking. The parents stated the father was in the bathroom and the child, Diego, was with the mother during the incident.'

"The notes made by the emergency room doctor, Kenneth Kim, stated: 'Mother reports that the child was in her usual state of good health until on the day of admission. At 7:30 in the morning, the mother reports that she went to change the diaper of the baby and child appeared normal. At 8 o'clock, mother was going in and out of the room from the bathroom to the bedroom. Her mother finally finished her duties and then came down to sit and feed the baby. Mother then reports that the baby was slipped under the blanket. The child looked exceeding pal[e]. The child also did not appear to be responding in any significant way. . . . [¶] By the time 911 arrived, the child was apneic and asystolic.'

"The mother stated that Ivan G. was the father of Diego and the deceased baby. She also had a seven-year-old daughter, Megan, whose father was Eddie P. The mother separated from Megan's father when Megan was quite young; she began using alcohol and illegal drugs, including marijuana and 'crack.' 'She initially was using on occasion, but eventually her frequency increased to daily use, when she had money.' When Megan was two years old, the mother left her with the maternal grandparents, 'as she was no longer capable of caring for her daughter.' The mother ultimately entered Victory Outreach, where she lived for a year while she got sober. She told the social

worker she had been sober for three years. The mother reported she had not seen Megan for two years and had not spoken to her for over one year. Before that, she saw Megan 'once in awhile.'

"Following an autopsy, the baby's death was ruled a homicide. 'The cause of death is blunt force trauma to the back of the head, resulting in bleeding into the brain.' No police reports or any other information could be released because the investigation into the homicide was ongoing. Both parents' attorneys advised their clients not to talk with the social worker about the circumstances surrounding the baby's death. [¶] . . . [¶]

"The jurisdiction hearing began in January 2009. The court admitted 12 SSA reports prepared between January and December 2008. The mother told the social worker that she had tripped while holding the baby two days before the incident that prompted the 911 call. The mother said the baby's head hit the wall when she tripped, and the baby was fussy after that. The Medical Director of the Child Abuse Services Team (CAST), Sandra Murray, opined that the tripping incident was 'not likely to create sufficient force to cause the head injury. While short falls onto hard surfaces can rarely cause linear skull fracture, this fracture has elements indicating that there was a greater force involved. The skull fractures from short falls are usually on the side of the skull, not the back where this fracture is. Separation of the sutures requires greater force than that from a short fall onto a hard surface. There was no damage noted on the wall where the mother said [the baby] hit her head. Wallboard is not a hard surface like that found on floors. [¶] The head trauma led to a sequence of events, which resulted in her death. The bronchopneumonia was the end result of the head and brain injury, which was the result of blunt force trauma. . . . [¶] The history provided by the mother does not adequately explain the injuries found in [the baby]. The most likely etiology of the head trauma is nonaccidental.'

"The social worker reported she explained to the mother that SSA would be recommending no reunification services in part because the mother failed to obtain medical care for the baby. 'The undersigned asked if she did not believe the child needed medical care, intentionally withheld medical care or consciously chose not to obtain medical care for [the baby]. The undersigned explained that it is difficult to understand why she did not take the infant to the doctor or hospital if she suspected that something was wrong. At this point, [the mother] stated, "I was afraid." The undersigned explained that this line of conversation [could] no longer go on as it will likely involve the details of the incident. As the undersigned continued to discuss the Social Services recommendation to the Court and the reasons supporting this recommendation, the mother spontaneously commented that she was afraid that they would take her children away.'

"Megan told the social worker the mother had told her 'she will come in the middle of the night and take her to Guatemala. The child expressed fear that her mother would come and take her away.' The mother denied making such a statement. Later, Megan told the social worker the mother 'whispered into her ear that she shouldn't have told the undersigned about their previous conversation and that it is Megan's fault that the mother is now going to go to jail.'

"The mother visited Megan and Diego regularly; she continued to test negative for drugs and participate in individual counseling.

"At the hearing, Dr. Murray testified the baby died of a combination of things starting with the head trauma which caused very significant brain injury, which led to her not breathing well and her heart stopping. The coroner listed the ultimate cause of death as bronchial pneumonia, which would take 'at least 24 hours' to develop. Dr. Murray opined that 'the head trauma probably significantly affected her breathing and respiratory status allowing fluids to accumulate in the lungs.' Her head injuries would have caused symptoms that 'anyone who is taking care of her' would notice. It was 'very

unlikely' the baby would have fed normally after the injuries. Dr. Murray testified there was a 'very high probability' that the baby's injuries were nonaccidental. She also testified timely medical care could have prevented the pneumonia.

"The doctor who performed the autopsy, Dr. Aruna Singhania, testified she found a skull fracture about eight centimeters long at the back of the baby's head; the fracture could only have been caused by 'a lot of force.' She testified symptoms from this head trauma would be exhibited 'within a few hours.' The bronchopneumonia could develop within two to 24 hours.

"The mother testified on the day of the incident, she woke up early to feed the baby because she had to take her roommate's four children to school. The baby acted normally. She left the baby with the father and was gone about 45 minutes. When she returned, the father was standing at the front door waiting for her, which she thought was strange. She then went into the kitchen to fix breakfast, where she made eggs and oatmeal and tea for her roommate. She then took food into her family's bedroom for herself, Diego and the father. When she sat down on the sofa, the father told her to 'be careful because the child's there, the baby's there.' She looked and saw a blanket. 'I lifted the blanket and saw that the child was under the blanket and that she did not have any color in her skin.' The mother became hysterical and picked the baby up and shook her 'to see if she would open her eyes or if she would move or cry.'" (*Claudia G. v. Superior Court* (July 28, 2009, G041825) [nonpub. opn.]).

The juvenile court sustained identical amended petitions as to Diego and Megan, finding by a preponderance of the evidence that they were subject to the court's jurisdiction under section 300, subdivision (a), (b) and (f). The petitions alleged that Claudia and Ivan physically abused I.G., who sustained "non-accidental fatal injuries caused by severe blunt force trauma to the head while in the sole and primary care of the child's mother and alleged father." The petition further alleged that the parents' explanations of the injuries are "inconsistent with the type of injuries sustained," "[t]he

Orange County Coroner's office has determined the manner of death to be homicide," and the parents "neglected to obtain medical care for the child, which was a causal factor in the child's death." The petitions alleged that Megan and Diego were at risk for abuse if they remained in parental care "as it is unknown at this time who caused the injuries to the child's sibling, . . . who died from her injuries in the mother's home, while under the care and supervision of the mother and [alleged father]."

At the conclusion of the disposition hearing, the court made its findings by clear and convincing evidence. It removed Diego and Megan from parental custody because I.G. died from "nonaccidental blunt force trauma inflicted on her while she was in the care of her mother and father," the parents failed to obtain prompt medical care, and both parents remain suspects in an ongoing police homicide investigation. In addition, mother deserted Megan when she left Megan at the grandparents' home, failed to provide clothing or other necessities, and had not spoken to Megan for one and one-half years at the time of the baby's death. "Megan, who is now about eight and a half years old, [would not have known] that she had a half brother Diego but for this dependency case. . . . [¶] Megan has suffered and continues to suffer emotional trauma as a result of her mother's abandonment." The court denied reunification services to the mother under section 361.5, subdivisions (b)(4) and (b)(6) because she "has caused the death of another child through abuse" and because "Diego and Megan were adjudicated dependents as a result of severe physical abuse or harm to a sibling or half sibling by a parent." The court found reunification services would not benefit Diego and Megan based on the same factors that supported their removal from parental custody.

DISCUSSION

Jurisdictional Findings

Claudia challenges the sufficiency of the evidence to support the jurisdictional findings under section 300, subdivisions (a), (b) and (f) as to Megan. Subdivision (a) describes a child who "has suffered, or there is a substantial risk that the

child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm." Subdivision (b) describes a child who "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment . . . ." Subdivision (f) describes a child whose "parent or guardian caused the death of another child through abuse or neglect."

Claudia contends jurisdiction cannot be sustained under any of these subdivisions of section 300 because there is insufficient evidence that she caused any harm to I.G.. She claims the evidence suggests that Ivan, not she, abused the baby and that there was no way she knew or should have known about the abuse or the baby's need for medical care. Relying on her testimony at the jurisdiction hearing, she contends there is no evidence to contradict her explanation that she left I.G. in good health with Ivan while she took her roommate's children to school and that she discovered the injuries when she returned and immediately called 911. We find sufficient evidence supports the jurisdictional findings.

In Claudia's early versions of the events surrounding I.G.'s death, she did not mention leaving the baby with the father. She reported that she either fed and/or changed the baby early in the morning, at which time she was acting normally, then found the baby blue and not breathing a short time later. She also told authorities she had

tripped and hit the baby's head against the wall a few days before. Claudia's most recent version was that she left I.G. with Ivan and discovered the injuries when she returned.

None of these versions is consistent with I.G.'s injuries. The evidence showed that the baby suffered a severe blow to the back of the head, which would have resulted in the rapid onset of obvious symptoms. There was also evidence that the blow affected her breathing and led to pneumonia. The baby's condition when 911 was called would have taken between two and 24 hours to develop. This evidence supported the juvenile court's courts conclusion that Claudia knew of I.G.'s injuries – either because she inflicted them, knew that Ivan inflicted them, or observed the obvious symptoms – and failed to obtain medical care. The evidence also supports the juvenile court's conclusion that Megan would be at a substantial risk of serious physical harm in Claudia's care.

Claudia challenges the jurisdictional finding under section 300, subdivision (f) by arguing the statutory language requires a showing that she caused I.G.'s death either directly or by criminal negligence. She is wrong. The statute simply requires "a finding by clear and convincing evidence that the parent has 'caused' the death of another minor." (*In re Alexis M.* (1997) 54 Cal.App.4th 848, 850.) There is nothing in the statutory language that implies the requirement of criminal negligence. (See *Mardardo F. v. Superior Court* (2008) 164 Cal.App.4th 481, 487.)

Denial of Reunification Services

Claudia next challenges the sufficiency of the evidence to support the denial of reunification services under section 361.5, subdivisions (b)(4) and (b)(6). These sections provide: "(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (4) That the parent . . . of the child has caused the death of another child through abuse or neglect. . . . [¶] (6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of . . . the

infliction of severe physical harm to the child, a sibling, or a half sibling by a parent . . . , and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent . . . ."

As Claudia argued when attacking the jurisdictional findings, she argues the denial of reunification services under subdivision (b)(4) cannot be upheld because there was insufficient evidence that any level of negligence or abuse on her part caused I.G.'s death. But the juvenile court found she knew of I.G.'s injuries and failed to get medical care; as we have discussed above, the court's findings are supported by substantial evidence.

Claudia next argues reunification services should not have been denied under subdivision (b)(6) because the juvenile court found it did not know whether she or Ivan inflicted the injuries to I.G.. But "when the child's . . . injuries were obvious to the child's caretakers and they failed to act, the court is not required to identify which parent inflicted the abuse by act and which parent inflicted the abuse by omission or consent." (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 852.) Claudia either inflicted the injuries or failed to act after she found out about them; this is a sufficient finding on which to deny reunification services under subdivision (b)(4).

Claudia's final contention is that the juvenile court abused its discretion when determining whether it would benefit Megan to pursue reunification with her under subdivision (b)(6). She points to the testimony of her service providers which was favorable to her progress in counseling and parenting programs.

When making the determination of benefit to the child under subdivision (b)(6), the juvenile court is directed to consider the factors listed in subdivision (h): "(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half sibling. [¶] (2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling. [¶] (3) The severity of the emotional trauma suffered by the child

or the child's sibling or half sibling. [¶] (4) Any history of abuse of other children by the offending parent or guardian. [¶] (5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision. [¶] (6) Whether or not the child desires to be reunified with the offending parent or guardian."

The court specifically stated it had considered the above factors and found that reunification would not benefit Megan. The court cited I.G.'s injuries and subsequent death, the parents' failure to obtain medical care, Claudia's desertion of Megan and failure to maintain contact with her, and Megan's adamant statements that she did not want to live with her mother. There is substantial evidence to support these findings, and we will not disturb them on appeal. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 64-65.)

DISPOSITION

The judgment is affirmed.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

IKOLA, J.